

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tom Bratschun on 3/26/2010.

The application has been amended as follows:

Abstract

An apparatus implantable in a heart ventricle includes a frame configured to engage an inner circumferential periphery of the ventricle and to expand and contract between an expanded state corresponding to a desired end diastolic diameter of the ventricle and a contracted state corresponding to a desired end systolic diameter of the ventricle. ~~Assisting means are~~ A bistable structure is operatively associated with the frame ~~for mechanically assisting movement of the ventricle toward at least one of an end systolic diameter during systole and an end diastolic diameter during diastole. The~~ bistable structure mechanically assists movement of the ventricle toward both an end systolic diameter during systole and an end diastolic diameter during diastole. ~~The assisting means~~ The bistable structure may be integrally formed of the frame. ~~The frame may be configured to have expanded and contracted bistable states for assisting~~

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~~both systole and diastole.~~ A method of implanting the apparatus in a heart ventricle includes surgically accessing a ventricle, inserting the apparatus in the ventricle and attaching the device to a portion of myocardium defining an inner circumferential periphery of the ventricle.

Response to Arguments

2. Applicant's arguments, see page 8, filed 3/5/2010, with respect to Claims 2, 5, 7, 13-15, 17, 36, 43, 69, 71, 80 and 89 have been fully considered and are persuasive.

The rejections and objections of these claims have been withdrawn.

3. Specifically, regarding the 35 U.S.C. 112, second paragraph rejection of Claim 2, Applicant has stated on the record that the "means operatively associated with the frame for limiting the ventricle to a select end diastolic internal diameter" refers to and thus incorporates the following structure: "the flexible cables 81, 82 terminated with the loops 83 and knots 88 that are firmly retained against member 30, 32 and 31, 33 respectively." This has removed any ambiguity as to what structure is incorporated by the claim language.

4. The remaining issues have been resolved by claim cancellations, change in claim dependency or amending the independent claims with previously indicated allowable subject matter.

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Allowable Subject Matter

5. Claims 1, 2, 4, 7, 14, 15, 36, 43, 45, 46, 59-62, 69, 71, 75, 80 and 89 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not contain a teaching of a bistable element that forces the ventricle to assume a specific end systolic diameter and end diastolic diameter. The prior art only teaches non-stable, elastic elements that aid in systolic contraction but only passively limit end diastolic diameter without actively assisting in diastolic expansion. Furthermore, the art does not disclose such an invention coupled with a mitral annuloplasty ring attached thereto.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARY A. PORTER, JR whose telephone number is (571)270-5419. The examiner can normally be reached on Monday - Thursday, 7AM - 4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571)272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A. P./
Examiner, Art Unit 3766

/Carl H. Layno/
Supervisory Patent Examiner, Art
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